



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: OCTOBER 28, 2022

IN THE MATTER OF:

Appeal Board No. 624492

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 624492 and 624493, the claimant appeals from the decisions of the Administrative Law Judge filed June 14, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective April 12, 2021 through April 18, 2021, and April 19, 2021 through September 5, 2021, on the basis that the claimant did not comply with registration and certification requirements.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant filed a claim for unemployment benefits in late 2020, and her claim was made effective April 6, 2020. The claimant had never applied for unemployment benefits before this claim. After filing, the claimant certified weekly for benefits online until April 11, 2021. When the claimant tried to certify for the following week, the period beginning April 12, 2021 through April 18, 2021, she was unable to do so because the tab that she would usually click to certify, was missing from the online certification page.

The claimant called the Department of Labor to find out how to proceed and was told by a Department representative that there was a problem with the verification of her identity (her "ID.me"). The representative told the

claimant that she would be unable to certify until that issue was cleared up. In addition, the claimant was told that if she tried to file a new claim, it would be red-flagged for fraud because she had already filed a claim. The claimant was not told that she needed to file a new claim to be able to continue to certify. In light of this information, the claimant did not certify or attempt to certify for benefits between April 12, 2021 and September 5, 2021, nor did the claimant file a new claim for unemployment benefits during this time.

The claimant's ID.me issues were not resolved until sometime in October 2021. The claimant did not certify or file a new claim after that because she understood that the benefits she had been receiving under the CARES Act were no longer available. The PEUC and FPUC benefits the claimant had been receiving in connection with her claim ended for everyone as of September 5, 2021.

OPINION: The evidence establishes that the claimant's benefit year ended on or about April 11, 2021, and that she did not thereafter file a new claim for benefits (register) or certify for benefits. Although the relevant Labor Law statute and attendant regulations provide that a claimant shall be entitled to benefits only if she has properly registered according to the rules prescribed by the Commissioner of Labor, and that a claimant who fails to certify for a benefit period within the seven day period for such certification shall not be eligible to receive benefits for that period, failures to register and certify may be excused upon presentation of facts and circumstances that constitute good cause. The receipt of misinformation from a Department of Labor representative has been found to constitute such good cause.

The claimant's credible and consistent testimony establishes that she received misinformation from a Department of Labor representative, and that she relied upon that information when she did not register or certify for benefits after April 12, 2021. While the claimant did not recall dates she called the Department of Labor, she consistently and credibly testified that when she tried to certify for benefits after April 11, 2021, she was unable to do so; that she called the Department for assistance multiple times, and was never told that she had to file a new claim for unemployment benefits to continue certifying because her benefit year had expired. Rather, the claimant credibly testified that she was repeatedly told that she was not able to certify because she had to clear up a problem with verifying her identity, and could not do anything until that issue was resolved.

Although the Commissioner of Labor witness testified that an ID.me problem would not prevent the claimant from filing or certifying, but would only delay the release of benefits to her if she was eligible, he did not dispute or disprove the claimant's testimony about what she was told when she called the Department to ask for assistance. Indeed, his testimony regarding the effect of a problem with ID.me supports a finding that the information the claimant received was incorrect, and was therefore misinformation provided by a Department representative.

The Commissioner's representative produced a screen shot of what he testified the claimant would have seen when she certified the last week of her claim. However, the date on this sample screen shot is July 2015, and it was not established that this is the same screen the claimant would have seen, or did see, in April 2021. While the claimant did not recall whether she saw that screen and information when she last certified, we find that regardless of whether she did or not, her credible and consistent testimony establishes that after she was not able to certify she contacted the Department, and received information upon which she relied. We note that despite adjournments, the Commissioner failed to present evidence to disprove or call into question what the claimant was told or would have been told upon calling for assistance. Thus, the claimant's credible and key testimony that she was not told she needed to file a new claim, and was told that she could not certify or file again until her identity verification problem was fixed, has not been refuted.

The Commissioner of Labor representative and witness contested the number of times the claimant

contacted or attempted to contact the Department, asserting that the Department's call history report does not

reflect the numerous calls the claimant asserts she made. However, it is significant that he also testified that if the Department's call system told the claimant to call back before she had the chance to enter her social

security number, those calls would not show up on the call history report. Moreover, we find that the number of calls the claimant made to the Department is not dispositive. Even if the claimant made only one call, her undisputed firsthand testimony establishes that she was given inaccurate information by a Department of Labor representative.

Accordingly, we find that since the evidence establishes that the claimant was misled by misinformation provided by a Department of Labor representative, her failures to register and certify from April 12, 2021 through September 5, 2021, are excused. The initial determinations holding the claimant ineligible on the basis of her failure to register and certify shall be overruled.

DECISION: In Appeal Board Nos. 624492 and 624493, the decisions of the Administrative Law Judge are reversed.

In Appeal Board Nos. 624492 and 624493, the initial determinations holding the claimant ineligible to receive benefits, effective April 12, 2021 through April 18, 2021, and April 19, 2021 through September 5, 2021, on the basis that the claimant did not comply with registration and certification requirements, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER